

REMARKS

The Examiner, in paragraph 1, of the official action has objected to the drawings in that it must show every feature of the present invention. In particular the Examiner states that there is no seal having an annular skirt for securing cap member to the neck portion in claim 16. By this amendment, claim 16 has been amended to correctly read that the cap member having an annular skirt which is clearly supported by the specification at page 5, lines 3-5, and also as illustrated by Figures 3 and 4.

The Examiner, in paragraph 3, also rejected claims 16-19, 21, 23, 24, 26-28 and 30 under 35 USC § 112 first paragraph for failing to comply with the written description requirement. First with regard to claim 1, it is respectfully submitted that the cap is provided with a skirt for securing the cap member to the bottle. Claim 16 has been appropriately amended to clearly describe this. However, claim 1 as originally submitted, states that the cap member has a skirt and therefore it is respectfully submitted that claim 1 is not indefinite as previously presented. As previously discussed, the specification at page 5 line 5 clearly provides such support. Also, as set forth in claim 18, the bottle closure assembly, according to claim 16, includes a neck portion that has external threads that engage internal threads provided on the annular skirt. Support for this may also be found at page 5 lines 4-5. In particular, the passage states "The internal surface 38 of the annular skirt 34 is provided with internal threads 40 for engaging external threads 42 on the outer surface of the upper end 36 of said bottle..." Thus, it is respectfully submitted the claims clearly have support in the description of the specification as currently set forth.

The Examiner, in paragraph 5, has rejected claims 1-4, 6, 8, 9, 11-13, 16-19, 21, 23, 24, 26-28 and 30 under 35 USC § 112 second paragraph as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner seems to be arguing whether or not the external probe is a part of the claimed invention. In this regard, it is normal to provide functional limitations describing specific functions of a part. MPEP 2173.05(g) clearly provides and states that there is nothing inherently wrong with defining some part of an invention in functional terms. This does not mean that those functional terms become a part of the positive claimed structure,

but merely define the context in which it is used. In this regard the functional language that is provided in the claims just merely describes the function of the rupture members when it engages an external probe. Thus, the probe is not a part of the claimed invention, but merely describes the functional characteristics of the various elements when it engages a probe. Applicants have also amended claims 2, 3 and 4 to overcome the lack of appropriate antecedent basis.

Also, with regard to whether or not the plurality of rupture members have adequate support in the independent claim, the claims have been amended to properly refer to a plurality of rupture members. Accordingly, appropriate antecedent basis is provided.

The Examiner, in paragraph 7, rejected the claims under 35 USC § 103(a) as being unpatentable over Pub. US 2003/42257 in view of U.S. 4,770,305 for the reasons set forth therein.

Applicant respectfully submit that Uchiyama fails to teach or suggest the invention as taught by applicant. The Uchiyama reference is directed to a structure that is totally apart and distinct from the present invention. In particular, there is provided a sealing member 10 that provides the sealing function of the bottle. The cited reference refers to "packing member 10" that is mounted to the cap 12. The packaging 10 includes a sealing disc 34. The sealing disc 34 is formed in substantially disc shape having a constant thickness L. See page 5, line 81. A plurality of arcuate thin portions 46 are provided in the disc portion 34 (see paragraph 82). Grooves 50 are provided in the surface 34A of the sealing disc 34C (see paragraph 84). Figures 10A and 10B, 11A and 11B, 12A and 12B illustrate the puncturing of the disc portion 34. Prior to this, the disc portion provides the seal. There is no teaching or suggestion of providing rupture members which puncture a separate seal as taught and claimed by applicant. Quite the contrary, this reference teaches away from providing a separate seal as it is the disc member 34 that provides the seal between the contents of the bottle and allowing dispensing there through.

The '305 reference, as applicants discussed in the previous response, is directed to providing a bottle cap that has projections that when the cap is depressed will engage the seal. However, the cap merely discloses a cap having a convex top 21 which is depressed to lower the projection to break the foil 3. However, it does not teach or suggest the providing of rupture members

that engage the seal upon engagement with an external probe and allow dispensing while the external probe is in the bottle. The Su reference includes a projection 29 that is used to push open the cap. The cap is removed for dispensing of fluids (see column 2, lines 35-38). Further, Su does not teach or suggest the rupture member having a hinge member allowing rupture members to pivot approximately 90° with respect to a plane parallel to the outlet. This allows external probe to be placed within the bottle and allow easy egress of the fluid while the probe is within the bottle.

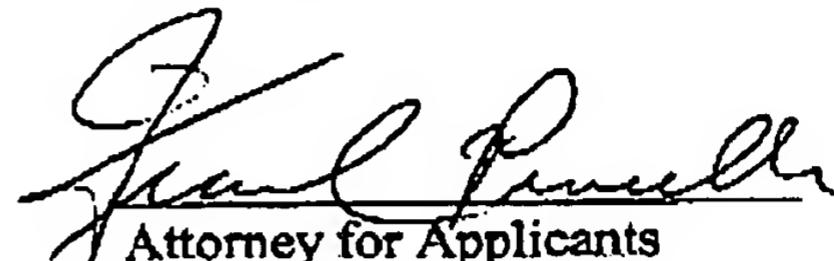
In order for one reference to be combined with another reference there must be some teaching, suggestion or motivation to do so. In order to combine references there must be an objective evidence showing a suggestion, teaching or motivation to combine the prior art references. The combining of reference can only be done if there is some suggestion or incentive to do so. The CAFC in *In re Lee* 277 Fed 3rd 1338 (61 USPQ 2nd 1430) 2002 at page 1434 stated:

“(the examiner can satisfy the burden of showing obviousness of the combination ‘only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references’)”.

As previously discussed, the Uchiyama reference teaches away from providing a separate seal as taught and claimed by applicant. In order to combine the references there would have to be some reason to do so. Since the Uchiyama reference is directed to eliminating a seal, there would be no reason to make the modification as suggested by the Examiner. Quite the contrary, this is a teaching away of combining two references as the ‘305 reference clearly requires the providing of a separate seal. Furthermore, neither one of the references teach or suggest that the plurality rupture members having a connecting hinge that allows rupture members to pivot approximately 90° with respect to the plane of said outlet. Thus, as previously discussed, allows easy egress of the fluid while the probe is within the bottle.

In view of the foregoing it is respectfully submitted that the claims in their present form are in condition for allowance and such action is respectfully requested.

Respectfully submitted,



Attorney for Applicants
Registration No. 27,370

Frank Pincelli/phw
Rochester, NY 14650
Telephone: (585) 588-2728
Facsimile: (585) 477-4646